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VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

March 16, 2017

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-001

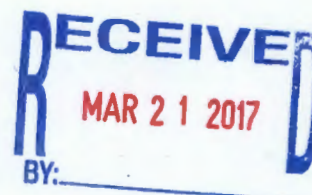
Scott Pruitt, Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency Region IX
75 Hawthorne Street
San Francisco, California 94105

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Samuel Unger, Executive Officer
LA Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Citizen Suit Coordinator
DOJ-Environmental and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415



RE: Los Angeles Waterkeeper v. Ajax Forge Company 2:17-cv-02066 ODW

Dear Madam and Sirs:

Pursuant to 40 CFR Section 135.4, please see enclosed a copy of the filed Complaint in the referenced matter filed March 15, 2017.

Should you have any questions, please contact me.

Sincerely,


Gideon Kriacov

Encl.



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to:

District Judge **Otis D. Wright, II**
Magistrate Judge **Gail J. Standish**

The case number on all documents filed with the Court should read as follows:

2:17-cv-02066-ODW (GJSx)

Most district judges in the Central District of California refer all discovery-related motions to the assigned magistrate judge pursuant to General Order No. 05-07. If this case has been assigned to Judge Manuel L. Real, discovery-related motions should generally be noticed for hearing before the assigned district judge. Otherwise, discovery-related motions should generally be noticed for hearing before the assigned magistrate judge. Please refer to the assigned judges' Procedures and Schedules, available on the Court's website at www.cacd.uscourts.gov/judges-requirements, for additional information.

Clerk, U.S. District Court

March 15, 2017
Date

By /s/ Estrella Tamayo
Deputy Clerk

ATTENTION

The party that filed the case-initiating document in this case (for example, the complaint or the notice of removal) must serve a copy of this Notice on all parties served with the case-initiating document. In addition, if the case-initiating document in this case was electronically filed, the party that filed it must, upon receipt of this Notice, promptly deliver mandatory chambers copies of all previously filed documents to the newly assigned-district judge. See L.R. 5-4.5. A copy of this Notice should be attached to the first page of the mandatory chambers copy of the case-initiating document.

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17 Attorneys for Plaintiff
18 LOS ANGELES WATERKEEPER

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LOS ANGELES WATERKEEPER, a
non-profit corporation,

Plaintiff,

vs.

AJAX FORGE COMPANY, a
corporation, DOES 1 through 10,

Defendants.

Case No. 2:17-cv-02066-ODW

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 to 1387)

LOS ANGELES WATERKEEPER ("Waterkeeper" or "Plaintiff"), a California
non-profit corporation, by and through its counsel, hereby alleges:

1 **I. INTRODUCTION**

2 1. This complaint seeks relief for ongoing and continuous violations by
3 Ajax Forge Company (“Defendant” or “AJAX”) of the Federal Water Pollution
4 Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or “Act”) and the
5 National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA
6 S000001, State Water Resources Control Board Water Quality Order No. 91-13-
7 DWQ, as amended by Water Quality Order No. 92-12-DWQ, Water Quality Order
8 No. 97-03-DWQ and Order No. 2014-0057-DWQ (“Permit” or “General Permit”)
9 resulting from its industrial operations at 1956 East 48th Street in Vernon, California
10 90058 (“Facility”).
11

12 2. Millions of gallons of polluted storm water originating from industrial
13 operations like those conducted at the Facility pour into storm drains and local
14 waterways during every significant rainfall event. The consensus among agencies and
15 water quality specialists is that this storm water pollution accounts for more than half
16 of the total pollution entering surface waters each year.
17

18 3. Los Angeles’ waterways are ecologically sensitive areas and are essential
19 habitat for dozens of fish and bird species as well as macro-invertebrate and
20 invertebrate species. Los Angeles’ waterways provide aesthetic opportunities, such as
21 wildlife observation, and public uses including both water contact and non-contact
22 recreation.
23

24 4. Industrial facilities, like the Defendant’s, that are discharging storm water
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1 and non-storm water contaminated with sediment, heavy metals, and other pollutants
2 contribute to the impairment of downstream waters and aquatic dependent wildlife,
3 expose people to such toxins, and harm the aesthetic and recreational significance Los
4 Angeles' waterways have for residents of these communities and visitors alike.

6 **II. JURISDICTION AND VENUE**

7
8 5. This is a civil suit brought under the citizen suit enforcement provisions
9 of the Act. This Court has subject matter jurisdiction over the parties and the subject
10 matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. §
11 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United
12 States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201–02 (power
13 to issue declaratory relief in case of actual controversy and further necessary relief
14 based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief); and 33
15 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

16
17
18
19 6. On January 3, 2017 Waterkeeper issued a sixty (60) day “Notice of
20 Violation and Intent to File Suit” letter (“Notice Letter”) to AJAX, including its
21 registered agent for service of process, for its violations of both substantive and
22 procedural provisions of the Act and Permit. The Notice Letter informed Defendant
23 of Waterkeeper’s intent to file suit against it to enforce the Act and Permit.

24
25
26 7. The Notice Letter was also sent to the Administrator of the United States
27 Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
28 Executive Director of the State Water Resources Control Board (“State Board”); and

1 the Executive Officer of the California Regional Water Quality Control Board, Los
2 Angeles Region ("Regional Board"), as required by the Act, 33 U.S.C. §
3 1365(b)(1)(A). A true and correct copy of the Notice Letter is attached as **Exhibit A**,
4 and is incorporated by reference.
5

6 8. More than sixty (60) days have passed since the Notice Letter was served
7 on AJAX and the State and federal agencies.
8

9 9. Plaintiff is informed and believes, and thereupon alleges, that neither the
10 EPA nor the State of California has commenced or is diligently prosecuting a court
11 action to redress the violations alleged in this complaint. This action's claim for civil
12 penalties is not barred by any prior administrative penalty under Section 309(g) of the
13 Act, 33 U.S.C. § 1319(g).
14
15

16 10. Venue is proper in the Central District of California pursuant to Section
17 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
18 located within this judicial district.
19

20 **III. PARTIES**

21 11. Plaintiff is a non-profit public benefit corporation organized under the
22 laws of the State of California with its main office located at 120 Broadway, Suite
23 105, Santa Monica, California 90401.
24

25 12. Founded in 1993, Waterkeeper is dedicated to the preservation,
26 protection and defense of the inland and coastal surface and groundwaters of Los
27 Angeles County. The organization works to achieve this goal through litigation and
28

1 regulatory programs that ensure water quality protection for all waterways in Los
2 Angeles County. Where necessary to achieve its objectives, Waterkeeper directly
3 initiates enforcement actions under the Act on behalf of itself and its members.
4

5 13. Waterkeeper has approximately 3,000 members who live and/or recreate
6 in and around the Los Angeles basin, including many who live and recreate along the
7 Los Angeles River and connected waters. Waterkeeper members use and enjoy local
8 waters and waterways to fish, surf, swim, sail, SCUBA dive, kayak, bird watch, view
9 wildlife, hike, bike, walk, and run. Additionally, Waterkeeper's members use the
10 waters to engage in scientific study through pollution and habitat monitoring, and
11 restoration activities.
12

13 14. The unlawful discharge of pollutants from the Facility into the Los
14 Angeles River and downstream waters impairs the ability of Waterkeeper members to
15 use and enjoy these waters. Thus, the interests of Waterkeeper's members have been,
16 are being, and will continue to be adversely affected by the Facility's failure to
17 comply with the Clean Water Act and General Permit. The relief sought herein will
18 redress the harms to Plaintiff caused by Defendant(s)' activities.
19

20 15. Continuing commission of the acts and omissions alleged herein will
21 irreparably harm Plaintiff and its members, for which they have no plain, speedy or
22 adequate remedy at law.
23

24 16. Plaintiff alleges on information and belief that AJAX is an active
25 California corporation, and, along with Fred Goble, is the Owner/Operator of the
26
27
28

1 Facility.

2 17. Plaintiff is informed and believes, and thereon alleges, that AJAX has
3 operated the Facility since at least 2002.
4

5 18. The Notice of Intent to Comply With the Terms of the General Permit to
6 Discharge Storm Water Associated with Industrial Activity ("NOI") filed by AJAX
7 on June 25, 2015 ("2015 NOI") lists Fred Goble as the President of Ajax Forge Co.,
8 Inc.
9

10 19. The 2015 NOI lists the Facility location as "1956 E 48th St., Los
11 Angeles, CA 90058." However, information available to Waterkeeper indicates the
12 Facility is located in the City of Vernon.
13

14 20. Plaintiff is informed and believes, and thereon alleges, that the
15 Registered Agent for AJAX is Bill Fisher at 1500 Quail Street, Suite 450, in Newport
16 Beach, California, 92660.
17

18 21. Upon information and belief, Plaintiff alleges that the true names, or
19 capacities of DOES 1 through 10, inclusive (the "DOES"), whether individual,
20 corporate, associate or otherwise, are presently unknown to Plaintiff, who therefore
21 sue said Defendants by such fictitious names. Plaintiff will amend this Complaint to
22 show their true names and capacities when the same have been ascertained. Whether
23 or not AJAX is associated with any other individual, corporate, associate or otherwise
24 was not immediately apparent through an initial investigation completed by Plaintiff.
25
26
27
28

22. AJAX and DOES 1 through 10 are referred to collectively throughout

1 this Complaint as Defendant or Defendants.

2 **IV. LEGAL BACKGROUND**

3 **A. The Clean Water Act.**

4
5 23. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
6 any pollutant into waters of the United States unless the discharge complies with
7 various enumerated sections of the statute. Among other things, section 301(a)
8 prohibits discharges not authorized by, or in violation of, the terms of NPDES permits
9 issued pursuant to section 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342(b). The Act
10 requires all point source discharges of pollutants to waters of the United States be
11 regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. § 122.26(c)(1).
12

13
14 24. “Waters of the United States” are defined as “navigable waters,” and “all
15 waters which are currently used, were used in the past, or may be susceptible to use in
16 interstate or foreign commerce, including waters which are subject to the ebb and flow
17 of the tide.” 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.
18

19
20 25. The EPA promulgated regulations defining “waters of the United States.”
21 *See* 40 C.F.R. § 122.2. The EPA interprets waters of the United States to include not
22 only traditionally navigable waters, but also other waters, including waters tributary to
23 navigable waters, wetlands adjacent to navigable waters, and intermittent streams that
24 could affect interstate commerce.
25

26
27 26. The Act confers jurisdiction over waters that are tributaries to
28 traditionally navigable waters where the water at issue has a significant nexus to the

1 navigable water. *See Rapanos v. United States*, 547 U.S. 715 (2006); *see also N. Cal.*
2 *River Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).

3 27. A significant nexus is established if the water in question “either alone or
4 in combination with similarly situated lands in the region, significantly affect the
5 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547
6 U.S. at 780; *N. Cal. River Watch*, 496 F.3d at 999-1000.

7 28. Section 505(a)(1) of the Act provides for citizen enforcement actions
8 against any “person” who is alleged to be in violation of an “effluent standard or
9 limitation...or an order issued by the Administrator or a State with respect to such a
10 standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(1) and 1365(f).

11 29. Defendant AJAX is a “person” within the meaning of section 502(5) of
12 the Act. *See* 33 U.S.C. § 1362(5).

13 30. An action for injunctive relief is authorized under section 505(a) of the
14 Act. *See* 33 U.S.C. § 1365(a)(1).

15 31. Each separate violation of the Act subjects the violator to a penalty of up
16 to \$51,570 per day for violations occurring after November 2, 2015; and up to
17 \$37,500 per day per violation for violations occurring prior to and including
18 November 2, 2015. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4
19 (Adjustment of Civil Monetary Penalties for Inflation).

20 32. Section 505(d) of the Act allows prevailing or substantially prevailing
21 parties to recover litigation costs, including attorneys’ fees, experts’ fees, and
22

1 consultants' fees. *See* 33 U.S.C. § 1365(d).

2 **B. California's Storm Water Permit.**

3 33. The State Board is charged with regulating pollutants to protect
4 California's water resources. *See* Cal. Water Code § 13001.

6 34. Section 402(p) of the Act establishes a framework for regulating
7 industrial storm water discharge under the NPDES permit program. 33 U.S.C. §
8 1342(p).

10 35. Section 402(b) of the Act allows each state to administer an EPA-
11 approved NPDES permit program for regulating the discharge of pollutants, including
12 discharges of polluted storm water. *See* 33 U.S.C. § 1342(b).

14 36. States with approved NPDES permit programs are authorized by Section
15 402(b) to regulate industrial storm water discharges through individual NPDES
16 permits issued to discharge and/or through the issuance of a statewide general NPDES
17 permit applicable to all industrial storm water discharges. *See* 33 U.S.C. § 1342(b).

20 37. California is a state authorized by EPA to issue NPDES permits. The
21 Permit is a statewide general NPDES permit issued by the State Board pursuant to the
22 Act.

24 38. Between 1997 and June 30, 2015, the Permit in effect in California was
25 Order No. 97-03-DWQ, which Waterkeeper refers to herein as the "1997 Permit."

27 39. On July 1, 2015, California re-issued the Permit pursuant to Order No.
28 2014-0057-DWQ's NPDES, which is referred to herein as the "2015 Permit."

1 40. The 2015 Permit superseded the 1997 Permit, except for enforcement
2 purposes, and its terms are as stringent, or more so, than the terms of the 1997 Permit.
3 *See* 2015 Permit, Findings, ¶ 6.

4
5 41. In order to discharge storm water lawfully in California, industrial
6 dischargers must secure coverage under the Permit and comply with its terms, or
7 obtain and comply with an individual NPDES permit. 1997 Permit, Finding #2; 2015
8 Permit, Findings, ¶ 12. Prior to beginning industrial operations, dischargers are
9 required to apply for coverage under the Permit by submitting a NOI to the State
10 Board. 1997 Permit, Finding #3; 2015 Permit, Findings, ¶ 17.

11
12
13 42. Compliance with the Permit constitutes compliance with the Act for
14 purposes of storm water discharges. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E).
15 Conversely, violations of the Permit are violations of the Act. 1997 Permit, Section
16 C(1); 2015 Permit, Section XXI(A).

17
18
19 **C. The Permit's Discharge Prohibitions, Effluent Limitations, and**
20 **Receiving Water Limitations.**

21 43. The Permit contains a Discharge Prohibition on the direct or indirect
22 discharge of materials other than storm water ("non-storm water discharges") that is
23 not otherwise authorized by an NPDES permit to waters of the United States. 1997
24 Permit, Section A(1); 2015 Permit, Section III(B).

25
26 44. The Permit contains an Effluent Limitation that requires permittee
27 facilities to reduce or prevent pollutants in storm water discharges through the
28

1 implementation of Best Available Technology Economically Achievable (“BAT”) for
2 toxic or non-conventional pollutants, and Best Conventional Pollutant Control
3 Technology (“BCT”) for conventional pollutants. 40 C.F.R. §§ 401.15-16; 1997
4 Permit, Section B(3); 2015 Permit, Section V(A). BAT and BCT include both
5 structural (e.g. installation of curbs to direct storm water flows) and non-structural
6 (e.g. sweeping) measures.
7
8

9 45. In order to comply with the statutory BAT/BCT mandate, covered
10 facilities must implement site-specific structural and non-structural Best Management
11 Practices (“BMPs”) designed to prevent or reduce discharges with pollutant
12 concentrations that violate the Permit, and therefore the Act.
13

14 46. EPA’s NPDES Storm Water Multi-Sector General Permit for Industrial
15 Activities (“MSGP”) include numeric benchmarks for pollutant concentrations in
16 storm water discharges (“EPA Benchmarks”) that are numeric thresholds to aid in
17 determining whether a facility discharging industrial storm water had implemented the
18 requisite BAT and/or BCT as mandated by the Act. *See* United States Environmental
19 Protection Agency NPDES Multi-Sector General Permit for Storm Water Discharges
20 Associated with Industrial Activity, as modified effective May 9, 2009.
21
22

23 47. EPA’s Benchmarks serve as objective measures for evaluating whether
24 the BMPs designed and implemented at a facility achieve the statutory BAT/BCT
25 standards. *See* MSGP, 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); *see also* MSGP,
26 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); *see also* MSGP, 65 Fed. Reg. 64,746,
27
28

1 64,766-67 (Oct. 30, 2000).

2 48. The State Board established Numeric Action Levels (“NALs”) in the
3 2015 Permit. *See* 2015 Permit, Section V(A). NALs are derived from, and function
4 similar to, EPA benchmarks. *See* 2015 Permit Fact Sheet, Section I(D)(5).
5 Benchmarks and NALs represent pollutant concentrations at which a storm water
6 discharge could impair, or contribute to impairing, water quality and/or affect human
7 health.
8
9

10 49. The Permit also contains various Receiving Water Limitations. 1997
11 Permit, Receiving Water Limitation C(1)-(2); 2015 Permit, Section VI(A). Receiving
12 Waters are those surface or other waters to which pollutants are discharged from a
13 given facility.
14
15

16 50. The first Receiving Water Limitation is that stormwater discharges shall
17 not cause or contribute to an exceedance of any applicable water quality standard
18 (“WQS”). *Id.*
19

20 51. WQS are pollutant concentration levels determined by the State Board,
21 the various regional boards, and the EPA to be protective of the beneficial uses of the
22 water that receive polluted discharges. WQS applicable to the discharges covered by
23 the Permit include, but are not limited to, those set out in the *Water Quality Control*
24 *Plan, Los Angeles Basin (Basin Plan for the Coastal Watersheds for Los Angeles and*
25 *Ventura Counties)*, California Regional Water Quality Control Board, Los Angeles
26 Region 4 (adopted June 13, 1994, as amended) (“Basin Plan”) and in the Criteria for
27
28

1 Priority Toxic Pollutants for the State of California ("CTR"), 40 C.F.R. § 131.38.

2 52. The second Receiving Water Limitation is that storm water discharges
3 shall not adversely impact human health or the environment. 1997 Permit, Receiving
4 Water Limitation C(1); 2015 Permit, Section VI(B).

6 53. The third Receiving Water Limitation is that concentrations of pollutants
7 in storm water discharges shall not threaten to cause pollution or a public nuisance.
8
9 See 2015 Permit, Section VI(C).

10 54. The Facility violates the Permit's Receiving Water Limitation when its
11 storm water discharges contain pollutant levels that: i) exceed an applicable WQS; ii)
12 exceed levels known to adversely impact aquatic species and the environment; or iii)
13 threaten to cause pollution.
14
15

16 55. The Basin identifies the "beneficial uses" of water bodies in the region.
17 The existing and/or potential beneficial uses of the waters to which AJAX discharges
18 include, among others, municipal and domestic supply, groundwater recharge, water
19 contact recreation, non-contact water recreation, warm freshwater habitat, wildlife
20 habitat, wetland habitat, marine habitat, rare, threatened, or endangered species,
21 preservation of biological habitats, migration of aquatic organisms, spawning,
22 reproduction, and/or early development, and shellfish harvesting. Non-contact water
23 recreation use is defined as "[u]ses of water for recreational activities involving
24 proximity to water, but not normally involving contact with water where water
25 ingestion is reasonably possible. These uses include, but are not limited to, picnicking,
26
27
28

1 sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study,
2 hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities."

3 Basin Plan at 2-2. Contact recreation use includes fishing and wading. *Id.*
4

5 56. Surface waters that cannot support the beneficial uses listed in the Basin
6 Plan are designated as impaired water bodies pursuant to Section 303(d) of the Act.
7 According to the State Board's 2012 California Integrated Report on 303(d) impaired
8 water bodies, Reaches 1 and 2 of the Los Angeles River are impaired by pollutants
9 such as pH, cyanide, diazinon, lead, nutrients, ammonia, cadmium, coliform bacteria,
10 copper, trash, zinc, and oil.¹ The Los Angeles River Estuary is impaired by, among
11 other pollutants, chlordane, sediment toxicity, and trash.² The Los Angeles/Long
12 Beach Harbor is impaired by at least chrysene, copper, sediment toxicity, mercury,
13 and zinc.³ The San Pedro Bay is impaired by sediment toxicity, and the Long Beach
14 City Beach, one of the San Pedro Bay beaches, is impaired by indicator bacteria.⁴
15
16
17
18

19 57. Discharges of pollutants at levels above WQS contribute to the
20 impairment of the beneficial uses of the waters receiving the discharges and constitute
21 violations of the Permit and Act.
22

23 58. The Basin Plan also narrative standard, including that inland surface
24 waters "shall not contain suspended or settleable materials in concentrations that
25

26
27 ¹ STATE WATER RES. CONTROL BD., 2012 CALIFORNIA INTEGRATED REPORT, available at
http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml.

28 ² *Id.*

³ *Id.*

⁴ *Id.*

1 cause nuisance or adversely affect beneficial uses.” Basin Plan, 3-37.

2 59. The Basin Plan also includes a toxicity standard requiring inland surface
3 waters “be maintained free of toxic substances in concentrations that are toxic to, or
4 that produce detrimental physiological responses in human, plant, animal or aquatic
5 life.” Basin Plan, 3-38.

6
7 60. The CTR includes numeric criteria set to protect human health and the
8 environment in the State of California.⁵

9
10 61. Discharges with pollutant levels in excess of the CTR criteria, the Basin
11 Plan standards, and/or other applicable WQS are violations of the Permit’s Receiving
12 Water Limitations.

13
14 62. WQS applicable to the Facility include, but may not be limited to, those
15 detailed in TABLE 1.

16
17 **TABLE 1**
18 **WATER QUALITY STANDARDS APPLICABLE TO AJAX FACILITY**

19 Parameter	Source	Numeric Limit
20 pH	Basin Plan	6.5-8.5 s.u.
21 Al	Basin Plan	1.0 mg/L
22 Cu	CTR	0.013 mg/L (Criteria Max Concentration)
23 Zn	CTR	0.120 mg/L (Criteria Max Concentration)
24 Pb	CTR	0.0025 mg/L (Criteria Continuous Concentration)

25
26
27
28 ⁵ U.S. ENVTL. PROT. AGENCY, WATER QUALITY STANDARDS; ESTABLISHMENT OF NUMERIC CRITERIA FOR
PRIORITY TOXIC POLLUTANTS FOR THE STATE OF CALIFORNIA FACT SHEET, EPA 823-00-008 (Apr. 2000)
available at <http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=p1007BKN.txt>

D. The Permit's Planning and BMP Design Requirements.

63. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") at the time industrial activities begin. 1997 Permit, Sections A(1)(a) and E(2); 2015 Permit, Sections I(I) (Finding 54) and X(B).

64. The SWPPP must identify and evaluate sources of pollution associated with industrial activities that may affect the quality of stormwater and authorized non-stormwater discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G).

65. The SWPPP must identify and describe site-specific BMPs to reduce or prevent pollutants associated with industrial activity in storm water and authorized non-stormwater discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must also include BMPs that achieve pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order Section A(2); 2015 Permit, Section I(D) (Finding 32), Section X(C).

66. The SWPPP must include: i) a narrative description and summary of all industrial activity, potential sources of pollution, and potential pollutants; ii) a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutant control measures; iii) a description of storm water management practices; iv) a description of

1 the BMPs to be implemented to reduce or prevent pollutants in storm water discharges
2 and authorized non-storm water discharges; v) the identification and elimination of
3 non-storm water discharges; vi) identify and locate where materials are being shipped,
4 received, stored, handled, as well as typical quantities of such materials and the
5 frequency with which they are handled; vii) a description of dust and particulate
6 generating activities; and viii) a description of individuals and their current
7 responsibility for developing and implementing the SWPPP. 1997 Permit, Section
8 A(1)-(10); 2015 Permit, Section X.
9

10
11
12 67. The 2015 Permit further requires certain SWPPP enhancements,
13 including a more comprehensive assessment of potential pollutant sources and more
14 specific BMP descriptions. *See* 2015 Permit Sections X(G)(2), (4), (5).
15

16 68. The objectives of the SWPPP are to identify and evaluate source of
17 pollutants associated with industrial activities that may affect the quality of storm
18 water discharges, to identify, design and implement site-specific BMPs to prevent the
19 exposure of pollutants to storm water, and to reduce or prevent the discharge of
20 polluted storm water from industrial facilities. 1997 Permit, Section A(2); 2015
21 Permit, Section X.
22

23
24 69. The objectives of the requirement to develop, maintain and revise a
25 SWPPP are to identify pollutant sources and develop BMPs that reduce or prevent
26 polluted storm water from negatively affecting Receiving Waters and California
27 communities. *See* 1997 Permit Section A(2); *see also* 2015 Permit Section X(C).
28

1 BMPs must achieve compliance with the Permit's Effluent Limitations and Receiving
2 Water Limitations. To ensure compliance, the SWPPP must be evaluated and revised
3 as necessary. *See* 1997 Permit Sections A(9)-(10); *see also* 2015 Permit § X(B).
4
5 Failure to develop or implement an adequate SWPPP (or revise an existing SWPPP,
6 as necessary) constitutes an independent Permit violation. *See* 2015 Permit, Fact
7 Sheet, Section I(1).
8

9 70. The Permit also requires that the discharger conduct an annual
10 comprehensive site compliance evaluation that includes a review of all visual
11 observation records, inspection reports and sampling analysis data, a visual inspection
12 of all potential pollutant sources for evidence of, or the potential for, pollutants
13 entering the drainage system, a review and evaluation of all BMPs to determine
14 whether the BMPs are adequate, properly implemented and/or maintained, or whether
15 additional BMPs are needed, and a visual inspection of equipment needed to
16 implement the SWPPP. 1997 Permit, Sections A(9)(a)-(c); 2015 Permit, Section XV.
17
18

19 71. Section A(9)(d) of the 1997 Permit requires that the discharger submit an
20 evaluation report that includes an identification of personnel performing the
21 evaluation, date(s) of the evaluation(s) necessary SWPPP revisions, a schedule for
22 implementing SWPPP revisions, any incidents of non-compliance and the corrective
23 actions taken, and a certification that the discharger is in compliance with the Permit.
24 1997 Permit; Section A(9)(d)(i)-(vi). If certification cannot be provided, the
25 discharger must explain in the evaluation report why the facility is not in compliance.
26
27
28

1 *Id.*, Section A(9)(d). The evaluation report shall be submitted as part of the Annual
2 Report specified in Section B(14) of the Permit. *Id.*

3 **E. The Permit's Monitoring and Reporting Requirements**

4
5 72. The 1997 Permit required facility operators to develop and implement a
6 monitoring and reporting program ("M&RP") when industrial activities begin at the
7 facility. 1997 Permit, Sections B(1)-(2) and E(3). The 2015 Permit also requires
8 implementation of an M&RP. 2015 Permit, Sections X(I) and XI.

9
10 73. The objectives of the M&RP are to inform discharges about the
11 effectiveness of BMPs designed in the planning phase and implemented on the
12 ground. Where the M&RP indicates that BMPs are not adequate to prevent or reduce
13 pollutants in storm water discharges, permittees have an obligation to re-design BMPs
14 and/or improve BMP implementation as necessary to ensure that storm water
15 discharges are in compliance with the Permit's Discharge Prohibitions, Effluent
16 Limitations and Receiving Water Limitations. *See* 1997 Permit, Section B(2); *see*
17 *also* 2015 Permit, Sections X(I) and XI.

18
19 74. The 2015 Permit requires facility operators to visually observe, monitor
20 and sample storm water discharges to ensure that the facility is complying with its
21 obligations under the Permit. 2015 Permit, Sections I(J) (Findings 55-56) and XI.

22
23 75. The M&RP must be revised as necessary to ensure Permit compliance.
24 1997 Permit, Section B(2)(d); 2015 Permit, Section XI(A)(4).

25
26 76. Discharges must conduct monthly visual observations of storm water
27
28

1 discharges as part of a legally adequate M&RP. 1997 Permit, Section B(4)(a); 2015
2 Permit, Section XI(A).

3 77. Dischargers must observe and document the presence of any floating and
4 suspended materials, oil and grease, discolorations, turbidity, or odor in a discharge,
5 and the source of any pollutants in storm water discharges from the facility.
6

7 78. Dischargers are required to maintain detailed records of each
8 observation, and corrective action taken to reduce or prevent pollutant from contacting
9 storm water discharges. *See* 1997 Permit, Section B(4)(c); *see also* 2015 Permit,
10 Section XI(A)(3).
11

12 79. The Permit requires dischargers to revise the SWPPP as necessary to
13 ensure that BMPs are effectively reducing and/or eliminating pollutants from entering
14 surface waters from the facility. 1997 Permit, Section B(4)(c), 2015 Permit, Section
15 XI(B)(1).
16

17 80. The Permit requires dischargers to visually observe and collect samples
18 of storm water discharges from each location where storm water is discharged. 1997
19 Permit, Sections B(5) and B(7); 2015 Permit, Section XI(B)(4).
20

21 81. Section B(5)(a) of the 1997 Permit required dischargers to collect storm
22 water samples during the first hour of discharge from the first storm event of the Wet
23 Season and at least one other storm event in the Wet Season. All storm water
24 discharge locations must be sampled. Facility operators that do not collect samples
25 from the first storm event of the Wet Season are still required to collect samples from
26
27
28

1 two other storm events of the Wet Season and must explain in the Annual Report why
2 the first storm event was not sampled.

3 82. Section B(5)(b) required that sampling conducted pursuant to the 1997
4 Permit occur during scheduled facility operating hours that are preceded by at least
5 three (3) working days without storm water discharge.
6

7 83. Section XI(B)(1) of the 2015 Permit requires sampling from a Qualifying
8 Storm Event ("QSE"), which is a precipitation event that produces a discharge for at
9 least one drainage area and is preceded by forty-eight (48) hours with no discharge
10 from any drainage area.
11

12 84. Dischargers are required to collect samples of storm water within 4 hours
13 of the start of facility operations if the QSE began within the previous 12-hour period,
14 e.g. for storms with discharges that begin during the night for facilities with day-time
15 operations. 2015 Permit, Section XI(B)(5)(b).
16

17 85. Section XI(B)(2) of the 2015 Permit requires dischargers to collect and
18 analyze storm water samples from two (2) QSEs within the first half of each reporting
19 year (July 1 to December 31), and two (2) QSEs within the second half of each
20 reporting year (January 1 to June 30).
21

22 86. Section XI(B)(11) of the 2015 Permit, among other requirements,
23 provides that permittees must submit all sampling and analytical results for all
24 samples via SMARTS within thirty (30) days of obtaining all results for each
25 sampling event.
26
27
28

1 87. The Permit requires dischargers to analyze each sample for pH, specific
2 conductance ("SC"), TSS, and either total organic carbon ("TOC") or Oil & Grease
3 ("O&G"). 1997 Permit, Section B(5)(c)(i); 2015 Permit, Sections XI(B)(6)(a)-(b).
4

5 88. Facilities classified as Standard Industrial Classification ("SIC") code
6 3462 (Iron and Steel Forgings) must to also analyze storm water samples for
7 aluminum ("Al"), Iron ("Fe"), Nitrate + Nitrite Nitrogen ("N+N") and zinc ("Zn").
8 1997 Permit, Section B(5)(c)(iii) and Table D; 2015 Permit, Section XI(B)(6)(d) and
9 Table 1.
10

11 89. The Permit also requires dischargers to analyze each sample for site-
12 specific toxic chemicals and other pollutants associated with the specific industrial
13 operations at the facility. 1997 Permit, Section B(5)(c)(ii); 2015 Permit, Section
14 XI(B)(6)(c).
15

16 90. On information and belief, Waterkeeper alleges that the Permit requires
17 the Facility to test all storm water samples for lead ("Pb"), Copper ("Cu"), Nickel
18 ("Ni"), Titanium ("Ti") and potentially other site-specific parameters.
19

20 91. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze
21 storm water samples for additional applicable industrial parameters related to
22 receiving waters with 303(d) listed impairments, or approved Total Maximum Daily
23 Loads.
24

25 92. Section B(14) of the 1997 Permit required that dischargers submit an
26 Annual Report to the applicable Regional Board by July 1 of each year. The Annual
27
28

1 Report must include a summary of visual observations and sampling results, an
2 evaluation of the visual observations and sampling and analysis results, laboratory
3 reports, the annual comprehensive site compliance evaluation report specified in
4 Section A(9), an explanation of why a facility did not implement any activities
5 required, and the records specified in Section B(13)(i).
6

7
8 93. Section XVI of the 2015 requires dischargers to submit an Annual Report
9 with a Compliance Checklist that indicates whether a discharger complies with, and
10 has addressed all applicable requirements of the 2015 Permit, an explanation for any
11 noncompliance of requirements within the reporting year, as indicated in the
12 Compliance Checklist, an identification, including page numbers and/or sections, of
13 all revisions made to the SWPPP within the reporting year, and the date(s) of the
14 Annual Evaluation.
15
16

17 **V. STATEMENT OF FACTS**
18

19 **A. The AJAX Facility.**

20 94. The State Board's electronic database, called the Storm Water Multiple
21 Application & Report Tracking System ("SMARTS") indicates the Facility has been
22 enrolled in the program since February 20, 1992.
23

24 95. SMARTS lists the Facility's coverage under the Permit as "Active."
25

26 96. Waterkeeper is informed and believes, and thereon alleges, that AJAX
27 first submitted an NOI for the Facility on September 18, 1992 ("NOI 1992"); then
28 submitted a second NOI for coverage under the 1997 Permit on February 23, 1998

1 under the Waste Discharge Identification ("WDID") No. 4 19I000107; and then
2 submitted a third NOI on June 25, 2015 under the same WDID number to continue
3 coverage for the Facility under the 2015 Permit ("2015 NOI").
4

5 97. The 2015 NOI certifies the Facility is classified under SIC code 3462.

6 98. The 2015 NOI certifies that the Facility is approximately 40,000 square
7 feet with approximately 44% impervious surfaces, including roofs.
8

9 99. Waterkeeper is informed and believes, and thereon alleges, that the
10 Facility serves the aerospace, defense and automotive industries.
11

12 100. Waterkeeper is informed and believes, and thereon alleges, that industrial
13 activities occurring on site include, but are not limited to, forging and hammering,
14 chemical coatings/applications, welding, deburring, grinding/polishing, machinery
15 and vehicle maintenance.
16

17 101. EPA's Industrial Storm Water Fact Sheet for Sector AA: Fabricated
18 Metal Products Manufacturing Facilities ("Sector AA Fact Sheet") indicates that
19 polluted discharges from industrial activities like those conducted at the Facility
20 commonly contain substances affecting pH; metals, such as iron, aluminum, and
21 nickel; toxic metals, such as lead, zinc, cadmium, chromium, and copper; organics;
22 chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); TSS; fuel
23 additives, gas/diesel fuel, O&G; coolants and solvents; acid/alkaline waste; and, trash
24 and debris.
25
26
27
28

102. Many of the pollutants described in the Sector AA Fact Sheet are on a list

1 of chemicals published by the State of California as known to cause cancer, birth
2 defects, and developmental or reproductive harm. Discharges of polluted storm water
3 to the local surface waters pose carcinogenic and reproductive toxicity threats to the
4 public and adversely affect the aquatic environment.

6 103. Waterkeeper is informed and believes, and thereon alleges, that the
7 Facility also stores raw materials and waste materials, including hazardous waste
8 designated under section 101(14) of Comprehensive Environmental Response,
9 Compensation, and Liability Act ("CERCLA"). *See* 40 CFR 372.65.

12 104. Waterkeeper is informed and believes, and thereon alleges, that the
13 Facility is comprised of one large, open-air structure ("Hammering Department"),
14 several small buildings that house shipping and receiving, an administrative office and
15 other auxiliary services; a driveway to the East and an alleyway on the West side of
16 the buildings; and a large rectangular yard North of the buildings, adjacent to an
17 unused railroad right-of-way.

20 105. On information and belief, Waterkeeper alleges that that the industrial
21 activity conducted under the Hammering Department roof cannot be regarded as
22 indoor industrial activity because the structure is not enclosed. Any and all fumes,
23 dust, particulates and similarly airborne pollutants associated with industrial activity
24 undertaken under the Hammering Department roof are potentially exposed to
25 stormwater upon outdoor deposition.

28 106. Waterkeeper is informed and believes, and thereon alleges, that AJAX

1 operates at least four large industrial fans (approximately 4' diameter) under the
2 Hammering Department roof. These fans are positioned and intended to cause the
3 outdoor deposition of fumes, dust, particulates and similarly airborne pollutants
4 generated under the Hammering Department roof.
5

6 107. On information and belief, Waterkeeper alleges that AJAX has not
7 designed or implemented a single BMP to reduce or prevent the exposure of fumes,
8 dust, particulates and similarly airborne pollutants to storm water.
9

10 108. On information and belief, Waterkeeper alleges that stormwater is
11 discharged from at least three discharge points, designated by AJAX as South
12 Driveway, East Driveway and West Driveway.
13

14 **B. The Facility's Discharges and Receiving Waters**
15

16 109. The NOI 2015 lists the "Receiving Water" as the Los Angeles River.
17 The Facility's storm water discharges flow to the storm drain system operated by the
18 County of Los Angeles, specifically BI 0588-Line A, which directs collected water to
19 Reach 2 of the Los Angeles River.
20

21 110. Waterkeeper is informed and believes, and thereon alleges, that the NOI
22 2015 erroneously failed to list the downstream Receiving Waters, which include
23 Reach 1 of the Los Angeles River, the Los Angeles River Estuary, the Los
24 Angeles/Long Beach Harbor, San Pedro Bay and the Pacific Ocean.
25
26

27 111. Waterkeeper is informed and believes, and thereon alleges, that each of
28 the Receiving Waters is a water of the United States.

1 112. Waterkeeper is informed, believes, and thereon alleges that the Facility's
2 polluted discharges cause, threaten to cause, and/or contribute to the impairment of
3 water quality in the Receiving Waters. Elevated levels of metals, nutrients, pathogens,
4 and sediments have resulted in the inability of the Receiving Waters to support their
5 beneficial uses.
6

7
8 113. Although pollution and habitat destruction have drastically altered the
9 natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish
10 and bird species, as well as macro-invertebrate and invertebrate species.
11

12 114. On information and belief, Waterkeeper alleges that storm water and
13 non-storm water contaminated with sediment, heavy metals, and other pollutants harm
14 the special aesthetic and recreational significance the Receiving Waters have for
15 people in surrounding communities, including Waterkeeper members.
16

17 115. The public's use of the Receiving Waters for water contact sports and
18 fishing exposes many people to toxic metals, pathogens, bacteria and other
19 contaminants in storm water and non-storm water discharges. Non-contact
20 recreational and aesthetic opportunities, such as wildlife observation, are also
21 impaired by polluted discharges to the Receiving Waters.
22

23
24 **C. Defendant's SWPPP and M&RP for the Facility**
25

26 116. On information and belief, Waterkeeper alleges that AJAX has not
27 developed or implemented, as of January 2017, a legally adequate SWPPP or M&RP.
28

117. On information and belief, Waterkeeper alleges that on July 14, 2015 Jeff

1 McElrath, President of AJAX, submitted to State Board a document purporting to be
2 “just a portion of Ajax Forge SWPP application.” The cover letter submitted with the
3 document states that “the full application is kept on site at our facility our swpp # is 4
4 19I000107...”
5

6 118. Waterkeeper is informed and believes, and thereon alleges, that the
7 document submitted by AJAX on July 14, 2015 constitutes the Facility’s current
8 SWPPP and M&RP.
9

10 119. The document appears to be a form provided by the State of Michigan to
11 guide an owner/operator in the development of a comprehensive pollution prevention
12 plan for that state’s NPDES permit.
13

14 120. The document fails to meet even basic SWPPP requirements, and fails to
15 include any of the following: accurate and complete descriptions of areas of industrial
16 activity, identification of significant industrial materials, description of industrial
17 processes, the identification of potential sources of pollution and associated pollutants,
18 descriptions of minimum and/or advanced BMPs to reduce or prevent polluted
19 discharges, and a site map with information necessary for pollution prevention
20 planning.
21
22

23 121. Waterkeeper is informed and believes, and thereon alleges, that the
24 Facility SWPPP does not include an adequate assessment of the Facility’s BMPs
25 corresponding to potential pollutant sources and associated pollutants.
26
27

28 122. Waterkeeper is informed and believes, and thereon alleges, that the

1 Facility SWPPP fails to develop a legitimate and sincere M&RP. For example,
2 information available to Waterkeeper indicates that the Facility has failed to collect
3 the required number of storm water samples every year for at least the last 5 years. In
4 fact, information available to Waterkeeper suggests that the Facility has collected only
5 a single sample during that time—a sample that, as described below, contained
6 massive exceedances of the only two parameters analyzed—pH and SC.
7

8
9 123. Waterkeeper is informed and believes, and thereon alleges, that AJAX
10 has failed to analyze any samples collected at the Facility for each of the parameters
11 required by the Permit and Act. As described herein, there are three sets of parameters
12 that the AJAX Facility is required to analyze—basic parameters (pH, TSS, SC, O&G
13 and TOC), industry-specific parameters (SIC 3462 requires analysis of samples for
14 Zn, Fe, N+N and Al) and site-specific parameters (Pb, Cu, Ni, Cr, Titanium and
15 potentially others). Information available to Waterkeeper indicates that the facility
16 has largely failed to analyze storm water samples for even the basic parameters, and
17 has never tested a single discharge for any metals.
18

19
20
21 124. On information and belief, Waterkeeper alleges that AJAX has been
22 aware of the requirement to test for metals since as far back as 2003. Page 1 of the
23 Facility's 2002-2003 Annual Report, as certified by Fred Goble, specifically identifies
24 the requirement that the Facility analyze for industry-specific parameters, found in
25 Table D of the 1997 Permit, including Zn, N+N, Fe and Al.
26
27

28 125. The 2011-2012 Annual Report, as certified by both Mark Chuha and

1 Frank De La Riva, similarly identifies four metals for which the Facility must analyze
2 all storm water samples on account of its SIC code.

3 126. A Notice of Violation ("NOV") issued by the Regional Board on August
4 29, 2011 specifically informed AJAX of its failure to analyze storm water samples for
5 Zn, N+N, Fe and Al. Based on this evidence, Waterkeeper alleges that Facility's
6 failure to test for metals during each storm event has been knowing and willful.
7
8

9 127. Waterkeeper is informed and believes, and thereon alleges, that industrial
10 activities and material storage occur throughout the Facility outdoors without
11 adequate cover or secondary containment to prevent storm water exposure to pollutant
12 sources.
13

14 128. Waterkeeper is informed and believes, and thereon alleges, that
15 pollutants associated with the Facility include, but are not limited to substances
16 affecting pH; metals, such as iron, aluminum, and nickel; toxic metals, such as lead,
17 zinc, cadmium, chromium, and copper; organics; chemical oxygen demand ("COD");
18 biological oxygen demand ("BOD"); TSS; fuel additives, gas/diesel fuel, O&G;
19 coolants and solvents; acid/alkaline waste; and, trash and debris.
20
21

22 129. Waterkeeper is informed and believes, and thereon alleges, that without
23 properly identifying all industrial activities, pollutant sources and pollutants in the
24 SWPPP, the Facility Owner and/or Operator cannot and has not developed all
25 appropriate BMPs.
26
27

28 130. Waterkeeper is informed and believes, and thereon alleges, that without

1 properly identifying all industrial activities and significant materials in the SWPPP,
2 the Facility Owner and/or Operator has not and cannot design or implement effective
3 and legally defensible BMPs.
4

5 131. Waterkeeper is informed and believes, and thereon alleges, that storm
6 water sampling at the Facility demonstrates that the Facility's storm water discharges
7 contain concentrations of pollutants above the Benchmark Levels, including, but not
8 limited to: aluminum, iron, zinc, lead, copper and N+N.
9

10 132. On information and belief, Waterkeeper alleges that AJAX has failed and
11 continues to fail to submit Annual Reports that comply with the Permit's reporting
12 requirements. For example, in each Annual Report since the filing of its 2011-2012
13 Annual Report, the Facility certified that: (1) a complete Annual Comprehensive Site
14 Compliance Evaluation was done pursuant to the Permit; (2) the SWPPP's BMPs
15 address existing potential pollutant sources and additional BMPs are not needed; and
16 (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to
17 achieve compliance.
18
19
20

21 133. Information available to Waterkeeper indicates that these certifications
22 are erroneous. For example, as discussed above, storm water samples collected from
23 the Facility contain concentrations of pollutants above Benchmarks and WQS, thus
24 demonstrating that the SWPPP's BMPs do not adequately address existing potential
25 pollutant sources.
26
27
28

D. Defendant's Specific Violations of Effluent Limitations, Receiving

Water Limitations and Protections for Impaired Water Bodies

134. On information and belief, Plaintiff alleges that the Facility has failed and continues to fail to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT/BCT as required by the Act and Permit.

135. The Regional Board conducted an unannounced site visit at the Facility on August 3, 2011 at 12:20pm. By 2:00pm the Regional Board had established that the Facility was out of compliance. The Regional Board observed "major violations," including failure to develop a complete SWPPP, failure to develop a complete monitoring program, and failure to implement good housekeeping.

136. The Regional Board's subsequent NOV issued to AJAX on August 29, 2011, which included photographs documenting specific violations, explained that the Regional Board's agent reported "exposed rusty metals and empty oil drums," as well as "[r]usty metal stains on the ground, metal residues and waste on the ground."

137. On December 8, 2016, an agent for Waterkeeper conducted a site reconnaissance visit to the Facility.

138. The Regional Board's descriptions and photographs from 2011 match with uncanny precision the state of the Facility as found by Waterkeeper on December 8, 2016. From the sidewalk (North of the Facility) and abandoned railroad right-of-way (South of the Facility), Waterkeeper's agent noted rust stains covering most of the Facility's outdoor hardscape, rusty machinery and scrape metal piled and exposed

1 to the elements, dozens of oil drums on the ground without the benefit of any type of
2 covering or secondary containment, massive quantities of metal waste and metal dust
3 in virtually every part of the Facility. Further, the sidewalk in front of the Facility is
4 stained with rust, indicating regular and consistent exposure of public areas to iron.

6 139. Waterkeeper alleges that observations by the Regional Board and
7 Waterkeeper provide clear and convincing evidence of a continuous failure between
8 2011 and 2016 to implement even the minimum BMPs required by the Permit, and to
9 take corrective action when prompted to do so by the State of California.

12 140. Analytical results of storm water sampling at the Facility corroborate that
13 AJAX has failed and continues to fail to develop and/or implement BMPs that achieve
14 BAT/BCT.

16 141. Waterkeeper is informed and believes, and thereon alleges, that the
17 significant exceedances of EPA Benchmarks further establish that AJAX has failed
18 and continues to fail to implement BMPs to prevent the exposure of pollutants to
19 storm water, and to prevent discharges of polluted storm water from the Facility.

22 142. AJAX submitted to the Regional Board analytical data for storm water
23 collected on January 6, 2016, in which it found pH levels of 2.2 s.u., 2.1 s.u. and 2.2
24 s.u. at the West Driveway, South Driveway and East Driveway respectively. The
25 Benchmark for pH is a range between 6.0 s.u. and 9.0 s.u.

27 143. The pH scale is logarithmic, i.e. a drop in the pH by 1.0 standard units is
28

equivalent to a 10-fold increase in acidity.⁶

144. The storm water discharged from the Facility was 10,000 times more acidic than the most acidic level acceptable to EPA.

145. The January 6, 2016 samples collected and analyzed by AJAX document that the Facility's storm water had a Specific Conductance ("SC") of 4900 ohms at all three discharge points.

146. SC is a measure of how well water conducts electrical current, and is an indirect indicator of the presence of dissolved solids, including chloride, nitrate, zinc, sulfate, phosphate, sodium, magnesium, calcium, iron and other conductive metals.

147. The EPA's benchmark-equivalent numeric limit for SC is 200 ohms. Thus, the storm water discharged from the Facility was almost 25 times higher than is allowed under the Permit, and provides clear and convincing evidence that the Facility is discharging metals in excess of the Permit's Effluent Limits.

148. Waterkeeper conducted its own sampling on November 26, 2016 of storm water discharged from the Facility and submitted samples to Weck Laboratories for analysis (see TABLE 2).

TABLE 2
EXCEEDANCES OF BENCHMARK VALUES AT AJAX FACILITY

Sample Date	Sample Point	Al (0.75 mg/L*)	N+N (0.68 mg/L*)	Fe (1.0 mg/L*)	Zn (0.117 mg/L*)	Cu (0.0636 mg/L*)
11.26.16	East Driveway	1.4 mg/L	1.4 mg/L	6.3 mg/L	0.40 mg/L	0.110 mg/L

*- numbers in parentheses are the benchmark numbers set out in the MSGP.

⁶See <https://archive.epa.gov/water/archive/web/html/vms54.html>.

1 149. These data corroborate a continuing failure to reduce or prevent
2
3 pollutants associated with industrial activity in storm water discharges through
4 implementation of BMPs that achieve BAT/BCT by establishing exceedances of four
5 metals and N+N, which is consistent with what experts would expect based on the pH
6 and SC data described above in paragraphs 145-150.
7

8 150. The Facility's storm water sampling data summarized herein in
9 paragraphs 145-152 and TABLE 2 demonstrate that the Facility's discharges contain
10 concentrations of pollutants that cause or contribute to a violation of WQS's
11 established in the Basin Plan and by the CTR set out above in TABLE 1.
12
13

14 151. On information and believe Waterkeeper alleges that storm water
15 discharges from the Facility contain elevated concentrations of pollutants that also
16 violate the Permit's second Receiving Water Limitation, which prohibit the discharge
17 of pollutants that adversely impact the environment or human health.
18

19 152. According to the EPA's 2012 303(d) List of Impaired Water Bodies, the
20 Facility's Receiving Waters are impaired for, among other pollutants, lead, pH,
21 copper and zinc.
22

23 153. The Facility's discharges contain these pollutants at levels exceeding
24 multiple numeric limits set for the protection of the environment and to protect the
25 Receiving Waters beneficial uses. Therefore, the Facility's discharges are adversely
26 impacting the environment and causing further impairment of already stressed aquatic
27
28

1 systems.

2 154. Further, heavy metals like zinc and lead are known to be associated with
3 various human health problems, including respiratory and reproduction illnesses,
4 cancer, pancreatic disorders, etc. The Facilities discharges contain elevated
5 concentrations of these pollutants, and evidence the Facility's adverse impact on the
6 human health of communities that live, work and/or recreate in and around the
7 Receiving Waters.
8

9
10 155. Plaintiff is informed and believes, and thereupon alleges, that all of the
11 violations alleged in this Complaint are ongoing and continuing.
12

13 **VI. CLAIMS FOR RELIEF**

14
15 **FIRST CAUSE OF ACTION**

16 **Defendant's Discharges of Contaminated Storm Water in**
17 **Violation of the Permit Effluent Limitations and the Act**
18 **(33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))**

19 156. Waterkeeper re-alleges and incorporates all of the preceding paragraphs
20 as if fully set forth herein.

21 157. Waterkeeper is informed and believes, and thereon alleges, that
22 Defendant failed and continues to fail to reduce or prevent pollutants associated with
23 industrial activities at the Facility from discharging from the Facility through
24 implementation of BMPs that achieve BAT/BCT.
25

26 158. Waterkeeper is informed and believes, and thereon alleges, that
27 discharges of storm water containing levels of pollutants that do not achieve
28

1 compliance with BAT/BCT standards from the Facility occur every time storm water
2 discharges from the Facility. Defendant's failure to develop and/or implement BMPs
3 that achieve the pollutant discharge reductions attainable via BAT or BCT at the
4 Facility is a violation of the Storm Water Permit and the Act. *See* 1997 Permit,
5 Effluent Limitation B(3); *see also* 2015 Permit, Section I(D) (Finding 32), Section
6 V(A); *see also* 33 U.S.C. § 1311(b).
7
8

9 159. Defendant violates and will continue to violate the Permit's Effluent
10 Limitations each and every time storm water containing levels of pollutants that do
11 not achieve BAT/BCT standards discharges from the Facility.
12

13 160. Each and every violation of the Permit's Effluent limitations is a separate
14 and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
15

16 161. Defendant's violations of the Permit's Effluent Limitations and the Act are
17 ongoing and continuous.
18

19 162. By committing the acts and omissions alleged above, AJAX is subject to
20 an assessment of civil penalties for each and every violation of the Act occurring from
21 January 13, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33
22 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
23

24 163. An action for injunctive relief is authorized by Act section 505(a),
25 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
26 would irreparably harm Plaintiff and the citizens of the State of California, for which
27 harm Waterkeeper has no plain, speedy, or adequate remedy at law.
28

1 164. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
2 because an actual controversy exists as to the rights and other legal relations of the
3 Parties.
4

5 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
6 hereafter.
7

8 **SECOND CAUSE OF ACTION**
9 **Defendant's Discharges of Contaminated Storm Water in Violation**
10 **of the Permit's Receiving Water Limitations and the Act**
11 **(33 U.S.C. §§ 1311(a), 1342, 1365(a), and 1365(f))**

12 165. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
13 fully set forth herein.

14 166. Waterkeeper is informed and believes, and thereon alleges, that
15 discharges of storm water containing levels of pollutants that adversely impact human
16 health and/or the environment from the Facility occur each time storm water
17 discharges from the Facility.
18

19 167. Waterkeeper is informed and believes, and thereon alleges, that storm
20 water containing levels of pollutants that cause or contribute to exceedances of water
21 quality standards has discharged and continues to discharge from the Facility each
22 time stormwater discharges from the Facility.
23

24 168. Plaintiff is informed and believes, and thereupon alleges, that since at least
25 January 13, 2012, Defendant has discharged polluted storm water from the Facility
26 causing or contributing to the violation of the applicable WQS and that adversely
27 impact human health or the environment in violation of the Receiving Water
28

1 Limitation of the General Permit.

2 169. Every day, since at least January 13, 2012, that Defendant has discharged
3 discharge polluted storm water from the Facility in violation of the General Permit is a
4 separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
5 violations are ongoing and continuous.
6

7 170. Each and every violation of the Storm Water Permit Receiving Water
8 Limitations is a separate and distinct violation of section 301(a) of the Act, 33 U.S.C.
9 § 1311(a).
10

11 171. By committing the acts and omissions alleged above, AJAX is subject to
12 an assessment of civil penalties for each and every violation of the Act occurring from
13 January 13, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33
14 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
15

16 172. An action for injunctive relief is authorized by Act section 505(a),
17 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
18 would irreparably harm Plaintiff and the citizens of the State of California, for which
19 Waterkeeper has no plain, speedy, or adequate remedy at law.
20

21 173. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
22 because an actual controversy exists as to the rights and other legal relations of the
23 Parties.
24

25 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
26 hereafter.
27

THIRD CAUSE OF ACTION

**Defendant's Failure to Prepare, Implement, Review, and Update
an Adequate Storm Water Pollution Prevention Plan
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

174. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

175. Defendant has not developed and implemented an adequate SWPPP for the Facility.

176. Each day since January 13, 2012, that Defendant does not develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

177. Defendant has been in violation of the SWPPP requirements every day since January 13, 2012. Violation continues each day that an adequate SWPPP for the Facility is not developed and fully implemented.

178. By committing the acts and omissions alleged above, AJAX is subject to an assessment of civil penalties for each and every violation of the Act occurring from January 13, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

179. An action for injunctive relief is authorized by Act section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm Waterkeeper has no plain, speedy, or adequate remedy at law.

180. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)

1 because an actual controversy exists as to the rights and other legal relations of the
2 Parties.

3 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
4 hereafter.

6 **FOURTH CAUSE OF ACTION**
7 **Defendant's Failure to Develop and Implement an**
8 **Adequate Monitoring and Reporting Program**
9 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

10 181. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
11 fully set forth herein.

12 182. Defendant has not developed and implemented an adequate monitoring
13 and reporting program for the Facility.

14 183. Each day since January 13, 2012, that Defendant did not develop and
15 implement an adequate monitoring and reporting program for the Facility in violation
16 of the General Permit is a separate and distinct violation of the General Permit and
17 Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring
18 and analytical results are ongoing and continuous.

19 184. By committing the acts and omissions alleged above, AJAX is subject to
20 an assessment of civil penalties for each and every violation of the Act occurring from
21 January 13, 2012 to the present, pursuant to sections 309(d) and 505 of the Act, 33
22 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

23 185. An action for injunctive relief is authorized by Act section 505(a),
24
25
26
27
28

1 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
2 would irreparably harm Plaintiff and the citizens of the State of California, for which
3 harm Waterkeeper has no plain, speedy, or adequate remedy at law.
4

5 186. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
6 because an actual controversy exists as to the rights and other legal relations of the
7 Parties.
8

9 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
10 hereafter.
11

12 **FIFTH CAUSE OF ACTION**
13 **Defendant's Failure to Accurately Certify Compliance in Annual Reports in**
14 **Violation of the Permit and the Act**
(33 U.S.C. §§ 1311, 1342, 1365(a) and 1365(f))

15 187. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
16 fully set forth herein.
17

18 188. Defendant has not accurately certified compliance with the General
19 Permit in each of the annual reports submitted to the Regional Board since at least
20 January 3, 12012.
21

22 189. Each day since at least January 13, 2012, that Defendant does not
23 accurately certify compliance with the General Permit is a separate and distinct
24 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
25 Defendant continues to be in violation of the General Permit's certification requirement
26 each day they maintain an inaccurate certification of its compliance with the General
27
28

1 Permit.

2 190. By committing the acts and omissions alleged above, AJAX is subject to
3 an assessment of civil penalties for each and every violation of the CWA occurring
4 from January 13, 2011 to the present, pursuant to sections 309(d) and 505 of the Act,
5 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.
6

7 191. An action for injunctive relief is authorized by Act section 505(a),
8 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
9 would irreparably harm Plaintiff and the citizens of the State of California, for which
10 harm Waterkeeper has no plain, speedy, or adequate remedy at law.
11

12 192. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a)
13 because an actual controversy exists as to the rights and other legal relations of the
14 Parties.
15

16 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth
17 hereafter.
18

19
20 **VII. RELIEF REQUESTED**

21 Wherefore, Plaintiff respectfully requests that this Court grant the following
22 relief:
23

24 a. Declare Defendant(s) to have violated and to be in violation of the Act
25 as alleged herein;
26

27 b. Enjoin Defendant(s) from discharging polluted storm water from the
28 Facility unless authorized by the Permit;

1 c. Enjoin Defendant(s) from further violating the substantive and
2 procedural requirements of the Permit;

3 d. Order Defendant(s) to immediately implement storm water pollution
4 control technologies and measures that are equivalent to BAT or BCT and prevent
5 pollutants in the Facility's storm water from contributing to violations of any water
6 quality standards;
7

8 e. Order Defendant(s) to comply with the Permit's monitoring and
9 reporting requirements, including ordering supplemental monitoring to compensate for
10 past monitoring violations;
11

12 f. Order Defendant(s) to prepare a SWPPP consistent with the Permit's
13 requirements and implement procedures to regularly review and update the SWPPP;
14

15 g. Order Defendant(s) to provide Plaintiff with reports documenting the
16 quality and quantity of their discharges to waters of the United States and their efforts
17 to comply with the Act and the Court's orders;
18

19 h. Order Defendant(s) to pay civil penalties of up to \$37,500 per day per
20 violation for each violation of the Act since January 13, 2012, up to and including
21 November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015
22 pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and
23 40 C.F.R. §§ 19.1 - 19.4;
24

25 i. Order Defendant(s) to take appropriate actions to restore the quality of
26 waters impaired or adversely affected by their activities;
27
28

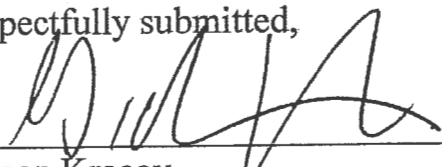
1 j. Award Plaintiff's costs (including reasonable investigative, attorney,
2 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.
3 § 1365(d); and,
4

5 k. Award any such other and further relief, as this Court may deem
6 appropriate.
7

8
9 Dated: 3/15, 2017

Respectfully submitted,

10
11 By:


12 Gideon Kracov
13 Attorneys for Plaintiff
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